



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION IV
1600 EAST LAMAR BOULEVARD
ARLINGTON, TEXAS 76011-4511

April 16, 2021

EA-21-028

Mr. Gerald M. Gaston, P.E.
Radiation Safety Officer
French Onion, LLC
P.O. Box 861
Bozeman, MT 59771

SUBJECT: NUCLEAR REGULATORY COMMISSION INSPECTION REPORT
030-31337/2021-001

Dear Mr. Gaston:

This letter refers to the announced remote routine inspection conducted on February 5-26, 2021, regarding your facility in Bozeman, Montana, with in-office reviews through March 23, 2021. The purpose of the inspection was to examine activities conducted under your license as they relate to public health and safety and to confirm compliance with the U.S. Nuclear Regulatory Commission's (NRC's) rules and regulations and with the conditions of your license. Within these areas, the inspection consisted of a selected examination of procedures, and representative records and interviews with personnel. The enclosed report presents the results of the inspection.

The preliminary inspection findings were discussed with you and Mr. Jim Verellen and Ms. Julie Verellen, representatives of Gaston Engineering and Surveying, P.C., during a call on February 26, 2021. A final exit call was held with the same individuals on March 24, 2021.

Based on the results of this inspection, an apparent violation was identified and is being considered for escalated enforcement action in accordance with the NRC Enforcement Policy. The current Enforcement Policy is included on the NRC's website at <http://www.nrc.gov/about-nrc/regulatory/enforcement/enforce-pol.html>. The apparent violation of Title 10 of the *Code of Federal Regulations* (10 CFR) 30.41(b) involved the transfer of NRC-licensed byproduct material to an unlicensed entity. The circumstances surrounding the apparent violation, the significance of the issues, and the need for lasting and effective corrective action were discussed with you and Mr. Verellen and Ms. Verellen during the exit meeting on March 24, 2021.

Before the NRC makes its enforcement decision, we are providing you an opportunity to:

- (1) respond in writing to the apparent violation addressed in the inspection report within 30 days of the date of this letter;
- (2) request a predecisional enforcement conference (PEC);
- or (3) request alternative dispute resolution (ADR).

If a PEC is held, it will be open for public observation, and the NRC may issue a press release to announce the time and date of the conference. If you decide to participate in a PEC or pursue ADR, please contact Dr. Lizette Roldan-Otero at 817-200-1455, or by email at Lizette.Roldan-Otero@nrc.gov within 10 days of

the date of this letter. A PEC should be held within 30 days and an ADR session within 45 days of the date of this letter.

If you choose to provide a written response, it should be clearly marked as a "Response to Apparent Violation in NRC Inspection Report 030-31337/2021-001; EA-21-028" and should include for the apparent violation: (1) the reason for the apparent violation or, if contested, the basis for disputing the apparent violation; (2) the corrective steps that have been taken and the results achieved; (3) the corrective steps that will be taken; and (4) the date when full compliance will be achieved. Your response may reference or include previously docketed correspondence, if the correspondence adequately addresses the required response. Additionally, your response should be sent to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555-0001, with a copy mailed to Ms. Mary C. Muessle, Director, Division of Nuclear Materials Safety, U.S. Nuclear Regulatory Commission Region IV, 1600 East Lamar Boulevard, Arlington, Texas, 76011, and emailed to R4Enforcement@nrc.gov within 30 days of the date of this letter. If an adequate response is not received within the time specified or an extension of time has not been granted by the NRC, the NRC will proceed with its enforcement decision, or schedule a PEC.

If you choose to request a PEC, the conference will afford you the opportunity to provide your perspective on this matter and any other information that you believe the NRC should take into consideration before making an enforcement decision. The decision to hold a PEC does not mean that the NRC has determined that a violation has occurred or that enforcement action will be taken. This conference would be conducted to obtain information to assist the NRC in making an enforcement decision. The topics discussed during the conference may include information to determine whether a violation occurred, information to determine the significance of a violation, information related to the identification of a violation, and information related to any corrective actions taken or planned.

In presenting your corrective actions, you should be aware that the promptness, and comprehensiveness of your actions will be considered in assessing any civil penalty for the apparent violations. The guidance in NRC Information Notice 96-28, "Suggested Guidance Relating to Development and Implementation of Corrective Action," may be helpful in preparing your response. You can find the Information Notice on the NRC website at: <http://www.nrc.gov/docs/ML0612/ML061240509.pdf>.

In lieu of a PEC, you may request ADR with the NRC in an attempt to resolve this issue. Alternative dispute resolution is a general term encompassing various techniques for resolving conflicts using a neutral third-party mediator. The technique that the NRC has decided to employ is mediation. Mediation is a voluntary, informal process in which a trained neutral mediator works with parties to help them reach resolution. If the parties agree to use ADR, they select a mutually agreeable neutral mediator who has no stake in the outcome and no power to make decisions. Mediation gives parties an opportunity to discuss issues, clear up misunderstandings, be creative, find areas of agreement, and reach a final resolution of the issues.

Additional information concerning the NRC's ADR program can be obtained at <http://www.nrc.gov/about-nrc/regulatory/enforcement/adr.html>. The Institute on Conflict Resolution (ICR) at Cornell University has agreed to facilitate the NRC's program as a neutral third party. Please contact ICR at 877-733-9415 within 10 days of the date of this letter if you are interested in pursuing resolution of this issue through ADR.

In addition, please be advised that the number and characterization of apparent violations described in the enclosed inspection report may change as a result of further NRC review. You will be advised by separate correspondence of the results of our deliberations on this matter.

In accordance with 10 CFR 2.390 of the NRC's "Agency Rules of Practice and Procedure," a copy of this letter, its enclosure, and your response, if you choose to provide one, will be made available electronically for public inspection in the NRC Public Document Room and from the NRC's Agencywide Documents Access and Management System (ADAMS), accessible from the NRC website at <http://www.nrc.gov/reading-rm/adams.html>. To the extent possible, your response should not include any personal privacy or proprietary information so that it can be made available to the public without redaction.

If you have any questions concerning this matter, please contact Dr. Lizette Roldan-Otero of my staff at 817-200-1455, or by email at Lizette.Roldan-Otero@nrc.gov.

Sincerely,

Mary C. Muessle, Director
Division of Nuclear Materials Safety

Docket No. 030-31337
License No. 25-27006-01

Enclosure:
NRC Inspection Report 030-31337/2021-001

cc w/Enclosure:
Carter S. Anderson, Administrator
Division Administrator QAD
Montana Department of Public Health
& Human Services
P.O. Box 202953
Helena, MT 59620-2953
Carter.Anderson@mt.gov

SUBJECT: NUCLEAR REGULATORY COMMISSION INSPECTION REPORT
030-31337/2021-001 - DATED APRIL 16, 2021

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By: JEV

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NRC-002

OFFICE	DNMS: MIB	DNMS:C: MIB	RIV: ACES	RC	D: DNMS
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DATE	3/30/2021	3/30/21	4/08/21	4/12/21	4/16/21

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U.S. NUCLEAR REGULATORY COMMISSION
REGION IV

Docket: 030-31337

License: 25-27006-01

Report: 2021-001

EA No: EA-21-028

Licensee: French Onion, LLC

Locations Inspected: Remote Inspection of 211 Haggerty Lane, Bozeman, MT

Inspection Dates: February 5 – 26, 2021, with in-office review through March 23, 2021

Exit Meeting Date: March 24, 2021

Inspector: Jason vonEhr, Health Physicist
Materials Inspection Branch
Division of Nuclear Materials Safety, Region IV

Approved By: Lizette Roldan-Otero, Chief
Materials Inspection Branch
Division of Nuclear Materials Safety, Region IV

Attachment: Supplemental Inspection Information

Enclosure

EXECUTIVE SUMMARY

French Onion, LLC NRC Inspection Report 030-31337/2021-001

On February 5-26, 2021, the U.S. Nuclear Regulatory Commission (NRC) performed an announced remote routine inspection of French Onion, LLC, of its facility in Bozeman, Montana, with in-office reviews through March 23, 2021. By the nature of this inspection and the intertwined relationship between the licensee, French Onion, LLC, and Gaston Engineering and Surveying, P.C. (GES), this inspection included reviews of GES's activities. The scope of the inspection was to examine the activities conducted under the license as they relate to public health and safety and to confirm compliance with the NRC's rules and regulations and with the conditions of the license.

Program Overview

French Onion, LLC, was authorized under NRC Materials License Number 25-27006-01 to possess and use byproduct materials, including cesium-137, and americium-241, for use in portable nuclear gauges to measure physical properties of materials. Licensed activities were authorized to be performed at the licensee's Bozeman, Montana, facility, as well as at temporary job sites in areas of NRC jurisdiction. (Section 1)

Inspection Findings

During an announced remote routine inspection, an apparent violation of 10 CFR 30.41(b) was identified concerning the transfer NRC-licensed byproduct material to an unlicensed entity. Specifically, the licensee transferred radioactive material via a written lease agreement to an unlicensed entity, GES. (Section 3)

Corrective Actions

During a telephone call on February 26, 2021, between the NRC; French Onion, LLC; and GES; French Onion, LLC agreed to immediately assume possession of the two portable nuclear gauges. GES agreed to suspend any further use of the portable nuclear gauges until such a time that GES is authorized by a specific NRC license, or via other equivalent means such as a general license issued in reciprocity of a specific Agreement State license, to possess and use the portable nuclear gauges. On March 1, 2021, GES submitted a Change-of-Control amendment request to NRC Region IV to assume ownership of the French Onion, LLC license. (Section 4)

REPORT DETAILS

1. Program Overview (87124)

1.1. Program Scope

French Onion, LLC, was authorized under NRC Materials License Number 25-27006-01 to possess and use byproduct materials, including cesium-137, and americium-241, for use in portable nuclear gauges to measure physical properties of materials. Licensed activities were authorized to be performed at the licensee's Bozeman, Montana, facility, as well as at temporary job sites in areas of NRC jurisdiction.

The licensee was authorized for and had leased two Troxler Model 3411-B portable nuclear gauges, each equipped with a 9 millicuries cesium-137 and 44 millicuries americium-241 radioactive source.

1.2. Inspection Scope

On February 5-26, 2021, the NRC performed an announced remote routine inspection of French Onion, LLC at its facility in Bozeman, Montana, with in-office reviews through March 23, 2021. The scope of the inspection was to examine the activities conducted under the license as they relate to public health and safety and to confirm compliance with the NRC's rules and regulations and with the conditions of the license. Within the areas identified above, the inspection consisted of a selected examination of procedures and representative records, and interviews with personnel.

2. Background

Prior to February 16, 2000, GES possessed NRC License 25-27006-01. In letter dated January 14, 2000, GES submitted an amendment request for a Change-of Control associated to the use of its portable gauges. On February 16, 2000, Amendment No. 3 transferred the license to a new entity, French Onion, LLC (NRC's Agencywide Documents Access and Management System (ADAMS) Accession No. ML003687813).

The January 14, 2000, letter stated:

"There will be a change in ownership to French Onion LLC, the location of which will be at 3055 Brass Lantern Bozeman MT, who will rent out the devices and an operator to qualified companies in need of the devices. Operators will be certified operators with the required training."

The NRC notes that licensees provide services, including those involving radioactive materials, to other entities as contractors or subcontractors, and that this Act does not represent a transfer of licensed radioactive materials as the licensed material remains under the control and authority of the NRC (or Agreement State) licensed entity through its operators.

3. Observations and Findings

During the February 5-26, 2021, remote inspection, the inspector conducted a review of licensed activities of French Onion, LLC. However, it became apparent that the entity possessing and using the portable nuclear gauges was GES. During the initial

communications, the inspector was informed that Mr. Jim Verellen would coordinate the inspection, rather than Mr. Gerald Gaston, the Radiation Safety Officer. Mr. Jim Verellen was an employee of GES, as was Ms. Julie Verellen, a Project Manager with GES. Mr. Gaston, who is also Vice President of GES, was minimally involved in the technical review of the inspection.

3.1. Apparent Violation - Title 10 of the Code of Federal Regulations (10 CFR) 30.41(a)

Most records related to licensed activity were either labeled with GES or had GES' letter head, including the utilization logs, transportation records, the dosimetry provided to the gauge users, and the commercial lease for the location of storage for the portable gauges. In the inspector's review, the only document that appeared to be labeled or otherwise associated with the licensee, French Onion, LLC, was the annual audit performed in accordance with 10 CFR 20.1101(c).

In the inspector's review of the relationship between French Onion, LLC and GES, the inspector was provided a copy of a written "Equipment Lease" which described the terms and conditions of GES's rental of certain equipment from the licensee, French Onion, LLC. The Equipment Lease was nominally in force from January 2019 – 2029, while a previous version, that was also provided, was in force from January 2009 – 2019 (the 'original' Equipment Lease was not maintained, and therefore unable to be reviewed). These contracts included the two portable nuclear gauges. The Equipment Lease for both periods of time included the following provisions:

"The equipment may only be used and operated in a careful and proper manner. Its use must comply with all laws, ordinances, and regulations related to the possession, use, or maintenance of the equipment, including registration and/or licensing requirements, if any." And

"Liability for injury, disability, and death of workers and other persons caused by operating, handling, or transporting the equipment during the term of this Lease is the obligation of the Lessee, and the Lessee shall indemnify and hold the Lessor harmless from and against all such liability."

The inspector concluded that all the gauge users were direct employees of GES, and that there did not appear to be any contractual relationship between the gauge users and French Onion, LLC. In combination with the Equipment Lease, the NRC concluded that the use of the gauges by GES gauge users was not covered under the authority of French Onion, LLC NRC Materials License 25-27006-01.

As a result, an apparent violation was identified related to the authorized methods of transfer of licensed radioactive material, which is described below:

10 CFR 30.41(a) requires, in part, that no licensee shall transfer byproduct material except as authorized pursuant to 10 CFR 30.41.

10 CFR 30.41(b)(5) requires, in part, that, except as otherwise provided in its license and subject to the provisions of 10 CFR 30.41(c) and (d), any licensee may transfer byproduct material to any person authorized to receive such byproduct material under terms of a specific license or a general license or their equivalents issued by Commission, or an Agreement State.

Contrary to the above, from January 1, 2009, through February 26, 2021, the licensee transferred byproduct material to a person not authorized to receive such byproduct material under terms of a specific license or a general license or their equivalents issued by Commission, or an Agreement State. Specifically, the licensee transferred two portable nuclear gauges, which require a specific NRC or Agreement State license, to Gaston Engineering and Surveying, P.C., an unlicensed entity.

For the portable nuclear gauges involved in this inspection, the licensee was not authorized by 10 CFR 30.41(b) to transfer the possession of these gauges to GES, an unlicensed entity not meeting any of the provided methods above. Therefore, an apparent violation of 10 CFR 30.41(a) was identified (030-31337/2021-001-01). While GES and French Onion, LLC, agreed there was an Equipment Lease that preceded the 2009-2019 lease, neither entity retained a copy of this older document, and therefore for the purposes of drafting the apparent violation, the NRC is using the start of the 2009-2019 lease as the start date of the apparent violation.

3.2. Other Observations and Findings

GES had eight gauge users during the period covered by the inspection (approximately 2015-2021), although several had been laid off due to a diminished workload caused by the COVID19 public health emergency. Of these eight, two users represented a majority of the recorded gauge use on the utilization logs. The gauges being used were two Troxler Model 3411-B, Serial Numbers 12361, and 12381, which had current leak tests demonstrating removable contamination was less than the threshold laid out in License Condition 13.D of NRC License 25-27006-01. These leak tests were analyzed by Qal-Tek Associates (NRC License 11-27610-01, Docket 030-34866).

The inspector reviewed photos demonstrating how the portable nuclear gauges would be secured, and blocked and braced while in transport in a company pickup truck. These photos showed the Troxler Type-A transportation case secured to the truck bed using cables and padlocks, which in addition to the lockable 'hatchback' of the vehicle satisfied both the U.S. Department of Transportation's 49 CFR requirement for block-and-brace as well as the NRC License 25-27006-01 License Condition 17 safety lock and 10 CFR 30.34(i) security controls.

The inspector discussed the practices and procedures in use with Mr. Verellen, the GES representative and occasional gauge user. The gauge users had access to a calibrated radiation survey meter (through the State of Montana Department of Transportation, License 25-11498-01, Docket 030-05179, and the inspector verified with the State of Montana Department of Transportation contact Mr. Jim Finstad).

Dosimetry was provided to all applicable individuals through Mirion. The dosimetry results indicated no detectable occupational exposures recorded in the two most recent available quarterly reports, and minimal 'lifetime' exposures, which was consistent with the frequency of use and type of portable nuclear gauge. GES used an "environmental" badge on the storage unit to document the public dose assessment (limited to no exposure recorded and a "lifetime" recorded exposure of 111 millirem since April 2006).

GES provided the inspector scans of the utilization logs, which appeared to adequately capture the use of the portable nuclear gauges, and other information that was required of French Onion, LLC under Appendix H of NUREG-1556, Volume 1, Revision 1. The inspector reviewed an example of the GES's transportation paperwork, which captured the applicable information required by 49 CFR, although with some errors (e.g. Imperial vs standard international units and inadequate formal Shipping Name), which were immediately corrected by GES representatives.

The inspector reviewed all the gauge user's training as a result of issues identified during the initial sampling. At the time of the start of the inspection no individual gauge user had current U.S. Department of Transportation 49 CFR hazardous materials training, and four of the eight gauge users either had no initial portable nuclear gauge safety training on file or who's training record was limited to a training 'card' certifying training was conducted but without any clear indication of what content the training course covered. GES immediately addressed these gaps with additional training through Troxler's online training program. As an example, a new employee did not have initial 49 CFR hazardous materials training, but GES was under the belief that they could use a 90-day provision in 49 CFR for new employees or employees with new hazardous materials duties. However, the provision (49 CFR 172.704(c)) provides that the individual must be under the direct supervision of an appropriately trained individual; the individual the licensee provided as direct supervision did not have any 49 CFR hazardous materials training on record, and the applicable period far exceeded 90-days, according to the GES portable nuclear gauge utilization log (May 11, 2018 – July 5, 2019).

The gaps in the 49 CFR hazardous materials training (the initial training for a new employee, and the failure create/maintain documentation related to these training, and the failure to refresh training in a timely manner) was identified as three failures associated with 49 CFR 172.704; specifically 172.704(c)(1), (c)(2), and (d).

The training failures would normally have been cited as a Severity Level IV violation, and the failures associated with the transportation records would have been cited as a minor violation. However, GES, as an unlicensed entity, was not subject to the NRC's provision in 10 CFR 71.5(a), and therefore these failures are noted for the record, but not formally cited against GES. As a result of the NRC's review of the relationship between GES and French Onion, LLC, the NRC is not citing French Onion, LLC, for these failures either. Nonetheless the deficiencies are noted here for the completeness of the record and in view of the licensee's/GES's planned corrective actions, which are described below in Section 4.

3.3. Closure of IR 030-31337/2015-001 Violation

During the most recent inspection of French Onion, LLC, in April 2015, a Severity Level IV violation was identified for the failure to conduct annual self-reviews in accordance with 10 CFR 20.1101(c). As noted in Section 3.1, French Onion, LLC had an annual audit in its own name performed by Mr. Jim Verellen of GES. The audit was conducted in December 2020, using the Troxler licensing guide, which was modeled after the NUREG-1556, Volume 1, Revision 1 Audit Checklist. The licensee also had audits documented in December 2019 and September 2018. While these audits included reviews of activities and performances by GES, and did not discuss the relationship between GES and French Onion, LLC, these audits satisfied the immediate

requirement in 10 CFR 20.1101(c), and therefore the Severity Level IV violation from the NRC's 2015 inspection is considered closed (030-31337/2015-001-01).

Nonetheless, the inspector notes again for the record that both the 2019 and 2020 audits identified deficiencies in the portable nuclear gauge program; in particular Question 3(g), concerning the 49 CFR hazardous materials training was identified as incomplete and in need of updating. Neither French Onion, LLC, nor GES provided a satisfactory answer to explain the lack of timely and comprehensive action 2 years in a row to correct these self-identified deficiencies.

4. Corrective Actions

During a telephone call held on February 26, 2021, between the NRC, French Onion, LLC, and GES, the licensee, French Onion, LLC agreed to immediately assume possession of the two portable nuclear gauges. GES agreed to suspend any further use of the portable nuclear gauges until such a time that GES is authorized by a specific NRC license, or via other equivalent means such as a general license issued for reciprocity of a specific Agreement State license, to possess, and use the portable nuclear gauges. On March 1, 2021, GES submitted a Change-of-Control amendment request (ADAMS Accession No. ML21060B508) to NRC Region IV to transfer ownership of the French Onion, LLC license to Gaston Engineering and Surveying, P.C.

As described in Section 3.2, GES immediately provided up-to-date training to all employees who were identified by the inspector as deficient in their 49 CFR hazardous materials training.

5. Exit Meeting Summary

On March 24, 2021, the NRC held an exit meeting summary with both GES and French Onion, LLC. The representatives of GES included Ms. Julie Verellen and Mr. Jim Verellen. The representative for French Onion, LLC, included Mr. Gerald Gaston. Both entities' representatives acknowledged the inspection findings for their respective organizations and did not dispute any of the details presented during the call.

Supplemental Inspection Information

PARTIAL LIST OF PERSONS CONTACTED

Gerald Gaston, Radiation Safety Officer of French Onion, LLC, and Vice President of Gaston Engineering and Surveying, P.C.

Jim Verellen, Professional Land Surveyor, Gaston Engineering and Surveying, P.C.

Julie Verellen, Project Manager, Gaston Engineering and Surveying, P.C.

INSPECTION PROCEDURES USED

87124 - Inspection of Fixed and Portable Gauge Programs

ITEMS OPENED, CLOSED, AND DISCUSSED

Opened

030-31337/2021-001-01	AV	Failure to transfer byproduct material via an authorized method in 10 CFR 30.41(b). (10 CFR 30.41(a))
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Closed

030-31337/2015-001-01	VIO	Failure to conduct an annual audit. (10 CFR 20.1101(c))
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Discussed

None.

LIST OF ACRONYMS USED

ADAMS	Agencywide Documents Access and Management System
ADR	Alternative Dispute Resolution
AV	Apparent Violation
CFR	<i>Code of Federal Regulations</i>
GES	Gaston Engineering and Surveying, P.C.
ICR	Institute on Conflict Resolution [at Cornell University]
NRC	Nuclear Regulatory Commission
PEC	Predecisional Enforcement Conference
VIO	Violation